

September 2026 Environmental Review Implementation Subcommittee meeting

Wednesday, September 16 from 1 – 4:00 p.m.

Join in person or online

- In person: [520 Lafayette Road, St. Paul, MN 55155](#), lower level conference rooms
 - Online: For the meeting link and more information, visit the [ERIS meeting webpage](#)
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Participating in board meetings

Attending in person

The Environmental Review Implementation Subcommittee (ERIS) will convene its meeting in person at the Minnesota Pollution Control Agency St. Paul office building. All visitors must sign in at the front desk.

Transportation options:

- Bicycle: Visit the [Saint Paul Bike Map](#) webpage for route information. Outdoor bicycle parking is available to the left of the front doors near the loading dock.
- Transit: Use [Metro Transit's Trip Planner](#) to determine the best routes and times.
- Car: You may park in a Visitor Parking space in the parking lot just outside the front door, or park in one of the visitor lots. The visitor lots are the Blue Lot (Olive St. and University Ave.) and the Jupiter Lot (on Grove St. across from the Ramsey County Law Enforcement Center); please see the [parking map](#). Parking in these lots is free of charge. You must register your vehicle at the front desk upon arrival.

Attending virtually

Members of the public may join the meeting virtually using the Teams link at the board meeting webpage link above. Please review the [Guide to Teams Participation](#) for additional information.

Accessibility

Please contact Environmental Quality Board (EQB) staff at least one week prior to the event at info.EQB@state.mn.us to arrange an accommodation. Meeting materials can be provided in different forms, such as large print, braille, or on a recording.

Public engagement opportunities at ERIS meetings

EQB encourages public input and appreciates the opportunity to build shared understanding with members of the public. The opportunities for public engagement for this meeting are below.

Public comment opportunities at ERIS meetings

EQB encourages public engagement and appreciates the opportunity to build shared understanding with members of the public. There are multiple ways to engage with staff and board members. One important way is to provide public comment at a board meeting.

The public comment period(s) at a board meeting provide an opportunity for members of the public to inform the board about their views related to the specific item under discussion or something related to the board's purview or authority. Tips for providing comments:

- Ensure that your comments are relevant and specific to the topic you are addressing.
- Say what you want the board to know or consider in moving forward with a piece of work.
- Identify a specific action that you want the Board to take.

If you have a question for the board or EQB staff, it will be noted by staff who will get back to you at a later time. This ensures that we have enough time at a meeting for all commenters to provide input to the board and that your questions can be fully considered.

Oral public comment



At each meeting, the agenda will show when ERIS will accept oral public comment. The chair will use their discretion to direct public comment and ensure the subcommittee's ability to effectively conduct business.

Procedure for giving oral public comment:

- **Virtual:** when prompted, use the "raise hand" feature in Teams, located at the top of your screen.
- **In person:** sign up at the welcome table before the meeting starts.
- When the chairperson calls on you to speak:
 - Introduce yourself before beginning your comment.
 - Please keep your remarks to the agenda item at hand.
 - Please be respectful of board members, staff, and other meeting participants. The chair, vice-chair, or other presiding officer will not tolerate personal attacks.
- The chairperson may limit commenters' time for remarks to ensure there is equal opportunity for the public to comment. Generally, your remarks will be limited to two (2) minutes.
- The chairperson may discontinue a commenter's time to speak if the comments are not reasonably related to the agenda item at hand.

Written public comment



You may submit written comment to EQB by emailing your letter to info.EQB@state.mn.us or mailing to: Environmental Quality Board, 520 Lafayette Road, Saint Paul, MN 55155. Comments must be received by EQB staff **by noon the day before the meeting**.

Staff will compile letters, make them available to members and the public, and attach them to the public record. Any written comments received after this deadline will be included in the next meeting packet.

Please only submit information that you wish to make available publicly. EQB does not edit or delete submissions that include personal information. We reserve the right to not publish any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior.

Agenda

Note that all listed times are estimates and are advisory only.

1. Welcome and roll call (1:00 pm)

Sarah Strommen – Chair, ERIS; Commissioner, Department of Natural Resources

2. Approval of consent agenda (1:05 pm)

- Meeting minutes from the July 15, 2026, Environmental Review Implementation Subcommittee meeting on packet page 5
- Preliminary agenda for the September 16, 2026, Environmental Review Implementation Subcommittee meeting

3. Executive Director’s report (1:10 pm)

Catherine Neuschler – Executive Director, EQB

4. Gas resource development projects – rulemaking update (1:15 pm)

Type of item: Informational

Summary: The proposed rules relating to environmental review of gas resource development projects went on notice on May 18, with the comment period closing on July 2. Legislation was also enacted on May 27 which resulted in a variety of new laws for regulating gas production. Staff will provide recommendations and considerations for adjusting the proposal based on the input received and the legislative changes. ERIS will have an opportunity to discuss the needs of the Board in order to move forward for rule adoption.

Public comment: EQB will take public comment specifically on this item.

Outcome: ERIS understands the information staff have reviewed, the reasoning behind any potential recommendations, where additional work may still be needed, and has an opportunity to provide input on what the final rule proposal should consider in moving forward for future Board approval.

Presenter: Jesse Krzenski – Environmental Review Program Director, EQB

5. Public comment (2:30 pm)

ERIS welcomes oral public comment on any of today’s agenda items, or other relevant topics. Please see guidance and procedures on packet page 2.

6. Closing and adjournment (3:00 pm)

July 2026 Environmental Review Implementation Subcommittee meeting

Wednesday, July 15, 2026 | 1:00-4:00 p.m. | 520 Lafayette Road, St. Paul, MN 55155, lower level conference rooms and online via Teams

Minutes

1. Welcome and roll call

Sarah Strommen, Commissioner of the Department of Natural Resources, ERIS Chair, called to order the Environmental Review Implementation Subcommittee meeting.

Members present: Joseph Barten, Nancy Daubenberger, Rebecca Haug, Todd Holman, Angie Smith, Sarah Strommen

Members excused: Grace Arnold, Katrina Kessler

Proxies present: Forest Eidbo (for Arnold), Frank Kohlasch (for Kessler)

EQB staff present: Catherine Neuschler, Stephanie Aho, Rebeca Gutierrez-Moreno, Hazel Houle, Jesse Krzenski, Sarah Lerohl, Sophia Musiak, Kayla Walsh

2. Approval of consent agenda

- Minutes from the March 18, 2026, Environmental Review Implementation Subcommittee meeting
- Preliminary agenda for the July 15, 2026, Environmental Review Implementation Subcommittee meeting

Motion: Member Smith moved the consent agenda; Member Daubenberger seconded. Motion carried with a unanimous vote.

3. Executive Director's report

Catherine Neuschler – Executive Director, EQB

Nothing to report

4. Gas resource development projects – rulemaking update

Presenter: Jesse Krzenski – Environmental Review Program Director, EQB

Type of item: Informational

Summary: The proposed rules relating to environmental review of gas resource development projects went on notice on May 18. The comment period closed on July 2, and staff then began the process of reviewing comments and considering what, if any, changes should be made prior to bringing rules forward to the Board for adoption.

ERIS received a brief update on 2026 legislative changes that may impact the contents of the final rule; major themes of the public comments; and the expected process for finalizing the rule.

Outcome: ERIS has an understanding of the information staff are reviewing and the process to bring forward a final rule.

5. ER program workplan and continuous improvement report out

Presenters: Catherine Neuschler – Executive Director, EQB; Kayla Walsh – Environmental Review Program Administrator, EQB

Type of item: Informational

Summary: EQB staff provided a preliminary proposed workplan for the environmental review program in FY27. This also included a review of the feedback from the continuous improvement process, and where the proposed workplan aligns with that input.

Discussion:

- Data centers are a timely and time sensitive topic, and continued updates would be beneficial.

Outcome: Executive Director received feedback on environmental review program workplan items to incorporate into FY27 EQB workplan for Board review and approval later in August.

6. Public comment

- Paula Maccabee – Executive Director and Counsel, Water Legacy

Comments on gas rulemaking:

- Difficult to participate in the process; have public comments with the specific issue.
- None of the comments were summarized or copied in the packet. Staff need to provide more information.
- Issues raised about locations of concern is not just that they were unwritten, but many locations of concern don't fall under DNR jurisdiction.
- Size of wells in terms of production should be considered, apart from the number of wells, as there could be only a few wells, but they could be very large.

- Should consider how much acreage of shoreline, forest, wetlands, or peatlands is going to be disturbed in deciding what projects need an EAW.
- Initially EQB said all projects should have an EAW, and environmental groups agree.
- In addition to helium, other gases should be addressed.

Comments on health workplan item:

- What the doctors and public are concerned about, and what the Tribes have made resolutions about, is not just health issues but a health impact assessment (HIA) process.
- The HIA process should not be top down from the RGU but should be based in a community-based process that considers non quantitative as well as quantitative information that considers social and psychological and cultural aspects of health viewed as a whole.
- There's a distinction between adding a paragraph to ask project proposers to discuss health in an EAW and an HIA.
- Lyssa Zimmerman, resident of Owatonna:
 - Residents have been dealing with a multi-year highway project, which is now in the appeals process. When residents were concerned about items not being completed accurately, they were told they could appeal at the end of the process. Residents do not want to be in the court system; it is a financial burden. We need the public to have rights in the process before then.

7. Closing and adjournment

With no further business, the Chair adjourned the meeting at approximately 2:30 pm.

Considerations for gas rulemaking revisions

Date: September 4, 2026

To: Environmental Review Implementation Subcommittee

From: Jesse Krzenski, Environmental Review Director

Background

The Environmental Quality Board (EQB or Board) published a [notice of intent to adopt](#) rules establishing mandatory environmental review categories for gas resource development projects in the Minnesota State Register on May 18, 2026, with a public comment period ending July 2, 2026. EQB received multiple comments ([public comment](#), [comment attachments](#)) suggesting changes to the proposed rules. On May 27, 2026, while the comment period was in progress, [new legislation](#) ("2026 Gas Law") became effective that revised multiple laws related to gas resource development.

This memo provides high-level information on the staff's consideration of the legislative changes and comments received (grouped by theme) and how staff recommend the proposed rules be adjusted. As a part of presenting a finalized rule to the Board for consideration, planned for the October meeting, staff will include revised rule language and a formal response to all comments received.

Executive Summary

The Board needs to approve moving forward to adopt rules, including any changes that should be made to the proposed rules prior to adoption. This memo provides staff recommendations and considerations for discussion with ERIS, to inform the final rule brought forward to the Board.

Although some commenters suggested that EQB should not adopt rules at this time, the **EQB staff recommend moving forward to adopt rules** to provide a requirement for environmental review.

EQB staff have been evaluating the following areas to determine the need for any potential changes to the proposed rules:

- New statutory definitions of gas wells and hydraulic fracturing, with the goal of adopting rules that are consistent with existing definitions and do not create confusion.
- New statutory prohibitions of hydraulic fracturing and underground injection, with the goal of ensuring mandatory category rules are established only for allowable projects.
- New statutory limitations placed on gas production (limiting construction of gas wells to helium production only, and only in specific counties), with the goal of ensuring the mandatory categories as proposed are needed.
- Any additional new information provided in comments that might support changes to the proposed thresholds or additions of new thresholds, based on potential for significant environmental effects.

EQB staff recommend that the rules be amended (at a minimum) to reflect changes made in the 2026 Gas Law. EQB staff also recommend strongly considering the addition of a threshold for any project located in areas where drinking water is accessed by a public water supply well, likely any project located in a vulnerable groundwater DWSMA.

Proposed rules

The [proposed rules](#) contained definitions and mandatory category thresholds for gas production for both Environmental Assessment Worksheets (EAW) and an Environmental Impact Statement (EIS). The definitions included:

- Gas – As defined in Minn. Stat. § 93.514
- Gas production – As defined in Minn. Stat. § 93.514
- Gas resource development projects – To identify the types of actions that may be subject to environmental review
- Gas well – To support certain EAW mandatory category thresholds
- High volume hydraulic fracturing – To support the EIS mandatory category threshold

The proposed rules included multiple mandatory category thresholds delineating when a project would be required to undertake environmental review. These included mandatory EAWs for:

- A project consisting of five or more gas wells
- Any project located in an area where the DNR was proposing to limit or prohibit gas resource development actions
- Any project incorporating underground injection for waste disposal
- Any project extracting gas created in the subsurface utilizing underground injection (stimulated gas production)

The proposed rules also included a mandatory EIS for any gas resource development project utilizing high volume hydraulic fracturing techniques.

Sources of potential changes to proposed rules

Legislative changes

The 2026 Gas Law primarily focused on amending Minn. Stat., ch. 103I to direct the Minnesota Department of Health (MDH) to make rules setting standards governing the construction of gas wells. These rules must be proposed by May 2028.

Some of the legislative changes affected the rulemaking authority given to the Department of Natural Resources (DNR) and EQB.

The following changes directly impact the EQB's proposed rules or rulemaking process:

- Addition of a requirement that all entities adopting rules are subject to the Tribal consultation requirements under Minn. Stat. § 10.65, and must submit a report to the legislature documenting the process and results
- Addition of a statutory definition of "gas well" (Minn. Stat. § 103I.005)
- Addition of a statutory definition of "hydraulic fracturing" (Minn. Stat. § 103I.005)
- A statutory prohibition on "hydraulic fracturing" (Minn. Stat. § 103I.709) and a requirement that MDH rules include a prohibition on hydraulic fracturing (Minn. Stat. § 103I.706)

- A statutory prohibition on injection of any “liquid, gas, or chemical” other than approved drilling fluids, unless a “class 2 injection well permit” is authorized by the U.S. Environmental Protection Agency (Minn. Stat. § 103I.709); and a requirement that MDH rules prohibit the injection or disposal of surface water, groundwater, or any other liquid, gas or chemical except for approved drilling fluids (Minn. Stat. § 103I.706)

Additional legislative changes include limiting construction of gas wells to Cook County, Lake County, and St. Louis County and a prohibition on construction of gas wells except for extracting or producing helium (Minn. Stat. § 103I.708).

The 2026 Gas Law also established a “moratorium on gas well conversion and construction” until the MDH gas well rulemaking is complete; “the legislature enacts a statute specifically authorizing the issuance of gas resource development permits”; and “the legislature enacts fees for gas resource development permits” (Minn. Stat. § 103I.707).

Public comments

EQB received comments on the proposed rules from the following:

- Grand Portage Band of Lake Superior Chippewa
- Intertribal Task Force on Helium Extraction (consisting of the Bois Forte Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, and Grand Portage Band of Lake Superior Chippewa)
- Pulsar Helium, Inc.
- WaterLegacy, Minnesota Center for Environmental Advocacy, Northeastern Minnesotans for Wilderness, CURE (joint submittal)
- The Nature Conservancy
- 199 members of the public, collected by WaterLegacy
- Five members of the public via e-comment process

Staff grouped input received into two large categories – concern about the rulemaking process and concern about the content of the proposed rules themselves.

Several commenters asked for a public hearing, asked the administrative law judge (ALJ) to disapprove the rules, or requested EQB to withdraw the rules. Additional process concerns included alleged failure to conduct Tribal consultation and use of the expedited rulemaking process despite inadequate legislative parameters.

Concerns specific to the content of the proposed rules include the following themes:

- Conflicts with 2026 legislative gas updates
- Disagreement with the proposed thresholds
- The need to require early Tribal notification
- The need to require groundwater monitoring
- Disagreement about the RGU designation for certain projects (DNR or MDH)

Considerations and recommendations for final rules

Rulemaking process

Comments received and responses

Several commenters raised process concerns and suggested that EQB should withdraw the rules or they should not be approved by the ALJ.

Comment received: Failure to conduct Tribal consultation

Environmental NGO commenters noted the legislation requires this EQB rulemaking to follow the requirements for Tribal consultation in Minn. Stat. § 10.65. Throughout this rulemaking process staff followed the EQB's own Tribal coordination and consultation policy. Staff coordinated with Tribes during the development of the rule proposal and offered consultation following EQB's Tribal Coordination and Consultation Policy. The EQB's Tribal Coordination and Consultation Policy was developed to fulfill the requirements of Minn. Stat. § 10.65.

Comment received: Legislative guidance is inadequate

Agency rulemaking relies on a legislative grant of authority. Commenters argue that the legislature improperly delegated its authority to EQB and "furnished no reasonably clear standard or policy to EQB in Minn. Stat. § 93.514(a)(3) or in any other statute to guide EQB's adoption of rules to establish mandatory categories for gas and oil production." Commenters contrast this with the detailed instructions to MDH found in the 2026 Gas Law.

Commenters claim that such a delegation of rulemaking authority in the absence of legislative instruction is unconstitutional, particularly for an expedited rulemaking. EQB staff do not agree with this assertion. The statute authorizing this rule (Minn. Stat. § 93.514, subd. 1(d)) stated that "any grant of rulemaking authority...is in addition to existing rulemaking authority and does not replace, impair, or interfere with any existing rulemaking authority."

EQB has long-standing authority under Minn. Stat. § 116D.04, subd. 2a(b), to establish EIS and EAW categories "where there is potential for significant environmental effects resulting from any major governmental action." Thus, the guiding principle that limits EQB's actions is "potential for significant environmental effects." EQB has adopted all its mandatory EAW and EIS categories under this authority.

Comment: Expedited rule process is inappropriate

Use of the expedited rulemaking process must be specifically authorized by the legislature. Commenters argue that the expedited rule process was inappropriate and undermines the goals of rulemaking under the Minnesota Administrative Procedures Act (MAPA, Minn. Stat., ch. 14).

EQB staff note that although it was optional for EQB to adopt *any* environmental review rules for gas resource development projects, if it *did* adopt such rules the legislature mandated that it use the expedited rulemaking procedure, stating that "[a]n agency adopting rules under this section must use the expedited procedure in section 14.389." Minn. Stat. § 93.514(b).

Staff recommendation on rulemaking process

EQB staff recommend that EQB move forward with a final rule. Gas resource development is coming to Minnesota, and having clear environmental review requirements prior to projects being proposed will meet the objectives of the environmental review program.

Rule language - alignment with 2026 Gas Law

Comments received and responses

Comments received: definitions and prohibited projects

Commenters noted several areas where the proposed rules conflicted with the 2026 gas law, including specific definitions and prohibitions on certain production techniques. Some commenters noted that the rules should be disapproved because of these conflicts.

Specifically, commenters identified that the legislation:

- Created a definition for “gas well” (that was different than that in the proposed rules.
- Prohibited hydraulic fracturing in a gas well and defined “hydraulic fracturing” in a way that was different than the proposed rules.
- Prohibited use of a gas well for underground injection or disposal of liquids, gas, or chemicals, except for approved drilling fluids or if a Class 2 injection-well permit is obtained from EPA.

Staff recommendation on rule language alignment with 2026 Gas Law

EQB staff recommend aligning the final rules with these key pieces of the 2026 Gas Law.

This includes incorporating the new legislative definition of “gas well” (an excavation that is constructed to locate, extract, or produce gas) in lieu of what was proposed (a well that is intended for gas production and that is included as part of a gas resource development project).

In general, the Board has been supportive of not establishing environmental review thresholds for projects that are prohibited. EQB staff therefore recommend that the final rules do not include the previously proposed EIS mandatory category threshold for projects using high volume hydraulic fracturing (HVHF), or the related definitions. EQB staff also recommend that the final rules do not include the two EAW thresholds proposed based on underground injection processes (underground injection for disposal and underground injection for the creation of gas). Based on the new law, these activities will not be allowed to occur in Minnesota, and so environmental review thresholds are not needed.

Rule language - proposed EAW thresholds

Comments received and responses

Comment received: Threshold of five wells is too high

Both public and Tribal commenters felt that the proposed mandatory EAW threshold of a gas resource development project containing five or more wells was too high and contrasted the threshold with EQB’s [GTAC recommendation](#) for an EAW for any project (one well). EQB staff disagree that the GTAC recommendation (which was intended for a temporary regulatory program while permanent rules were in development) is relevant here.

Comment received: Number of wells is not an appropriate indicator

Some commenters felt that the number of wells was not properly indicative of a project’s potential for significant environmental effects and therefore should not be used to set the mandatory category threshold. They recommend that EQB evaluate other potential threshold measures, such as production volumes, length of pipelines of various types, or type of gas. Many of the suggested ideas were considered by staff in the rule development process, but ultimately EQB staff decided that the number of wells was the best way to identify those projects that may have the potential for significant environmental effects based on the combined impact of surface disturbance, noise, light, truck traffic, and air emissions, while maintaining ease of implementation.

Comment received: Location-based thresholds are inappropriate and more are needed

Commenters raised concerns that the areas subject to DNR's proposed gas resource development operation restrictions do not encompass all areas or locations where projects should require mandatory review. Commenters and input from Tribal governments suggested multiple additional areas where any proposed gas project should be required to undergo environmental review.

These included:

- Areas near public waters, public water wetlands, peatlands, DWSMAs (where the aquifer is vulnerable to contamination);¹ areas within a geological formation with no peer-reviewed literature characterizing water quality impacts from gas extraction; areas which have no pre-project baseline groundwater quality data (EIS); and other protected areas.
- Near Tribal Reservations, trust lands, or documented treaty-reserved harvesting fishing, or gathering areas.
- Regardless of project proposer, in areas where the cumulative number of wells proposed exceeds the number of wells threshold within a five-year period.

In addition, commenters argue that EQB's proposed threshold based on locations where DNR rules will limit drilling due to proximity to sensitive environmental features is an illegal delegation of EQB authority to DNR and an improper incorporation by reference (because DNR rules are not yet adopted). In general, EQB staff disagree with the notion that an environmental review threshold cannot incorporate other agency's rules. Existing EQB rules reference "sensitive shoreland areas" that are created by DNR. However, EQB staff recognize there are difficulties associated with referencing a rule that has not yet been adopted.

EQB staff recommend maintaining the location-based EAW thresholds that are based on DNR rules that prohibit certain activities, and are looking into ways to make this rule language more clear.

EQB staff also recommend considering the addition of a location-based EAW threshold to protect public drinking water supplies. This would likely be a threshold for projects that are located within vulnerable groundwater DWSMAs, mirroring language already present in the mandatory category for animal feedlots (located in "an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination"). Staff are considering how to draft this language to consider both the surface and subsurface activities likely to be associated with gas resource development projects.

Comment received: Thresholds should consider type of gas

Commenters stated that projects are likely to present different environmental concerns based on the type of gas being targeted for production. EQB staff explored developing thresholds that differentiate by gas in the drafting of the proposed rules. Based on the understanding that any gas being targeted is anticipated to have a variety of associated gases within the targeted reservoir and many of the anticipated impacts of producing gas can be anticipated regardless of target gas, this concept was not considered for the proposed rules.

¹ DWSMAs are established by MDH. A DWSMA covers the surface and subsurface area surrounding a public water supply well, including the wellhead protection area. MDH notes that "Within DWSMAs, contamination on the land surface or in water can affect the drinking water supply". DWSMA vulnerability is an assessment of the likelihood that the aquifer within the DWSMA is subject to impact from overlying land and water uses. DWSMAs are identified for the purposes of informing land and water use decisions in protecting and preventing drinking water contamination. For more information, see [MDH's Source Water Protection webpage](#).

EQB staff do not recommend revising the proposed rule to incorporate variations of mandatory categories for gas resource development based on the type of gas targeted for production; due to the 2026 Gas Law, the only gas currently allowed to be targeted is helium (with the exception of allowing for carbon dioxide processing if associated with the target gas). EQB staff will continue to coordinate with MDH as they develop rules for gas well construction. MDH rules must address the hazards of other gases that may be present with regard to groundwater quality, health and safety.

Comment received: General lack of EIS thresholds

Public and Tribal commenters noted that the proposed rules do not include enough EIS thresholds, particularly if the proposed HVHF threshold is removed due to the legislative prohibition. Some commenters indicated that the overall “set” of mandatory categories is not complete if there are no thresholds at which an EIS would be required. EQB staff do not agree that including an EIS category is mandated by EQB’s statutory authority; multiple mandatory categories in EQB’s current rules consist only of EAW thresholds.

EQB staff do not recommend adding additional mandatory EIS thresholds on this basis.

Comment received: Require early Tribal notification

Tribal commenters indicated a need to be informed of gas resource development projects undergoing environmental review in a timely manner, aligning with the rules proposed by the DNR requiring Tribal notification for draft permits.

At this time, EQB staff does not anticipate revisions to the rules based on this recommendation, as it is not within the scope of *creating* mandatory categories for gas production projects. EQB staff are continuing to work on best practices for Tribal notification and anticipate bringing forward the larger idea for discussion as part of our FY27 workplan item on planning for program updates to reflect Tribal sovereignty.

Comment received: Require baseline data collection/groundwater monitoring

The comments from Tribes note significant concerns about the potential impacts to groundwater and drinking water resources from gas resource development projects. The comments request a requirement for all projects to conduct baseline analysis and a commitment to continue monitoring after permitting. The comments also note that this is likely outside of EQB’s authority and should be considered as a permit condition/requirement from the DNR. EQB staff concur that this type of requirement is outside of EQB’s authority. However, in response to concerns about impacts to drinking water, staff are recommending adding a requirement for projects located within a vulnerable DWSMA to undergo a mandatory EAW.

Comment received: Responsible government unit

Some commenters noted that the DNR is an improper RGU assignment for certain gas resource development projects, and requested that EQB consider MDH’s authority over wells as part of the RGU designation. However, EQB staff’s determination of RGU is based on which governmental unit maintains the greatest responsibility for supervising or approving the project as a whole. EQB staff do not recommend identifying an RGU other than the DNR, because DNR has the greatest regulatory authority over gas resource development projects. While MDH rules will establish gas well construction standards, no well can be constructed unless it is included in a valid gas resource development permit issued by the DNR (Minn. Stat. § 103I.706, subd. 5.)

Staff recommendation on rule language for proposed EAW thresholds

EQB staff recommend that the final rule continue to include a mandatory category threshold that requires an EAW based on the number of wells, without regard to the type of gas being extracted.

EQB staff recommend that the final rule continue to include mandatory category thresholds that require an EAW for any project locating in areas where DNR is prohibiting surface disturbance or both surface disturbance and directional drilling. EQB staff also recommend that the final rule add a requirement for an EAW for any project locating within a vulnerable DWSMA.

EQB staff recommend that the final rule maintain DNR as the RGU for all gas resource development projects.

Recommended final rule and next steps

The staff recommend that EQB move forward with finalizing a rule to establish mandatory categories for gas resource development projects. Based on the legislative changes and the comments received, EQB staff find that changes to the proposed rule are needed.

The multiple recommended changes are discussed throughout this memo. Implementation of the staff recommendations would result in a final rule that:

- Requires an EAW for any gas resource development project consisting of five or more gas wells
- Requires an EAW for any gas resource development project (of any size) that will be located in:
 - Areas where DNR prohibits certain kinds of activities (surface disturbance or surface disturbance and directional drilling)
 - Areas where drinking water is accessed by a public water supply well, likely any project located in a vulnerable groundwater DWSMA

The role of ERIS is to support the Board and the Chair in implementing their responsibilities under the statutes and rules related to Minnesota's environmental review program. Therefore, the staff request input from ERIS on whether the staff recommendations are clear and clearly supported, and if the resulting rule is needed and reasonable.

Subject to ERIS input, staff plan to bring forward a final rule to the full Board in October. That will include a summary of changes, response to comments, revised rule language, and a draft Order Adopting Rules. Staff would be asking the Board to approve moving forward with submitting a final rule to the Court of Administrative Hearings for review, and for the Director to have authority to modify the rule as needed to obtain CAH approval and to adopt the rule once approval is received.

Request that the Environmental Quality Board Expand Industrial Classifications from Light and Heavy to Light, Mid-Point and Heavy.

Type of Change Requested: Policy Change Program Component: Add the definition Mid-Point Industrial Implicated Statute or Rule: 4410.0200 Definitions and Abbreviations Improvement Idea Provided to EQB: Adding an additional category creates a better fit for hyperscale data centers, which fail to align with Light Industrial or Heavy Industrial.	Date: August 28, 2026 Contact Information: Cindy Lee Olson 
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The proposed Google Hyperscale Data Center project has emerged as one of the most divisive issues in Hermantown history. The community is sharply polarized, pitting advocates of economic development against residents who fear the erosion of their rural lifestyle and localized environmental degradation.

A central point of contention for opponents is the city's decision to bypass a formal Environmental Impact Statement (EIS). Google and city officials maintain that an EIS is unnecessary because the facility is currently classified under "light industrial" zoning rules.

However, applying a light industrial classification to a hyperscale data center is fundamentally flawed. These massive facilities do not fit neatly into traditional definitions of either light or heavy industry, a discrepancy that exists because modern technological scaling has severely outpaced local regulatory frameworks.

According to standard municipal zoning definitions:

- **Light Industrial:** Characterized by low-impact operations with minimal noise, odor, or vibrations. These facilities typically feature a smaller footprint, produce consumer goods, and maintain close proximity to residential areas due to their minimal community disruption.
- **Heavy Industrial:** Characterized by high-intensity, capital-intensive operations that require massive acreage, generate high noise and environmental emissions, and rely on heavy transportation infrastructure like rail lines or deep-water ports.

The proposed data center fails to align with the light industrial framework due to its immense utility demands, continuous noise output from cooling infrastructure, the

necessity of sound barriers, extensive security fencing, and a workforce capacity requiring 570 parking spaces. Conversely, it does not fully meet heavy industrial criteria either; while it requires massive buildings and acreage, it generates no operational smoke or odor and does not rely on heavy freight transportation.

To resolve this regulatory gap, I propose that a third, intermediate zoning category be added to the definition of Industrial: **"Mid-Point Industrial" (or Medium Industrial)**. This classification would be specifically tailored for modern infrastructure projects that command vast parcels of land, generate high traffic volumes, require structural sound mitigation, and place unprecedented demands on water and electrical grids.

This is not a novel approach. Municipalities across the country are actively rewriting their zoning codes to address the unique footprint of data centers:

- **Menomonie, Wisconsin:** Passed Ordinance 2026-01 to remove data centers from standard warehousing definitions, creating a dedicated *I-4 Data Center Industrial District* to ensure strict municipal oversight.
- **Wausau, Wisconsin:** Restricted data centers to a newly amended *Medium Industrial* tier, implementing a mandatory 200-foot residential buffer zone to mitigate cooling infrastructure noise.
- **Monticello, Minnesota:** Shifted data centers into a *General Industrial* classification to better manage off-site infrastructure strains and isolate them from low-impact business parks.
- **Allentown, Pennsylvania:** Faced intense public pushback when attempting to down-classify a hyperscale project into a general commercial zone, highlighting the risks of misclassifying these intensive facilities.

Adopting a Mid-Point Industrial classification is the most responsible path forward. It would formalize regulations surrounding data center utility consumption, spatial footprints, and acoustic impacts. Most importantly, acknowledging the intensity of this mid-tier classification would appropriately trigger a mandatory, comprehensive EIS—providing the rigorous environmental transparency and oversight that Hermantown residents are legally demanding.